

November 1, 2011

**MORTGAGE LENDING AND FRAUD PREVENTION TASK FORCE LEGISLATIVE
REPORT PURSUANT TO IC 4-23-30-6**

Overview

The Mortgage Lending and Fraud Prevention Task Force (“Task Force”) held a public meeting every month except one in 2010. One meeting was delayed and not able to be rescheduled due to weather related issues. Representatives from the Indiana Department of Financial Institutions, the Indiana Office of the Attorney General, the Indiana Secretary of State-Securities Division, the Indiana Department of Insurance, the Indiana Real Estate Commission and the Real Estate Appraiser Licensure and Certification Board were present. Each meeting included a public session followed by a closed executive session, if needed. Some members participated by phone as permitted by IC 4-23-30-5(2).

IC 4-23-30-4 outlines the duties of the task force. The task force shall meet each month to coordinate the state’s efforts to regulate the various participants involved in originating, issuing, and closing home loans. Group will strive to enforce state laws and rules concerning mortgage industry practices and mortgage fraud and prevent fraudulent practices in the home loan industry. Information and resources will be shared among the agencies unless prohibited by law.

Shared Knowledge and the RREAL IN Database - Pursuant to Indiana Code 27-7-3-15.5, beginning January 1, 2010, all persons or entities that close certain real estate transactions are required to report detailed information regarding professionals, organizations and agencies involved in the transactions to the Residential Real Estate Acquisition of Licensee Information and Numbers (RREAL IN) database. Users required to enter information into the database include lending institutions, title producers, mobile notaries and attorneys who close qualifying transactions.

All required information must be entered into the RREAL IN database within 10 business days of the transaction closing date. Currently, there are no exclusions for licensed professionals, companies, agencies or institutions from providing the required information or being recorded as part of the transaction, if they are involved in the transaction.

Information and user training material on the RREAL IN database are available to potential users online. Also, user training via conference call is available to resident and non-resident licensees. Ongoing communication to all targeted licensees is necessary to help increase awareness of the RREAL IN database and the submission requirements.

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The RREALIN database makes information readily available to a variety of state agencies. Current state agencies that have established access to the RREALIN database for research, investigative and reporting purposes include the Department of Insurance, the Attorney General's Office, the Department of Financial Institutions, the Secretary of State, and the Indiana Professional Licensing Agency. With the assistance of information sharing across these agencies, and data collected from the RREAL IN database, cases of fraud continue to be vetted in increasing numbers.

The passing of House Bill 1273 during the 2011 legislative session amended the legislative requirements of IC 27-7-3-15.5. This change further refines the types of transactions to be reported. Beginning January 1, 2012, licensees are required to report additional types of mortgage transactions, as well as non-mortgage transactions. New transactions required to be reported include subordinate lien mortgages, reverse mortgages, cash purchases and land contracts. Additional closing and licensee information is also required by the amended statute. Several enhancements and fixes have been implemented to the RREAL IN database to accommodate the legislative changes.

Current RREAL IN Database statistics:

Registered User Accounts	Transactions Submitted since Inception of the Database
2271	244,301

YTD Inquiries	YTD Transaction Edits/Additions Request	YTD Password Resets
1358	1774	32

For more information regarding the RREALIN database, please visit the website at: http://in.gov/apps/in_rreal/Login.aspx

The following information is required by IC 4-23-30-6 to be placed into a Legislative Report and submitted to the Legislative Services Agency on or before November 1, 2011.

**I. Information on the regulatory activities of each agency described in subsection (b), including a description of any:
(A) Disciplinary or Enforcement Actions Taken**

Indiana Office of the Attorney General

The Indiana Office of the Attorney General- Licensing Enforcement & Homeowner Protection Unit has jurisdiction to investigate and prosecute the activities of professional licensees and seek discipline of their licenses. Discipline ranges from revocation to a letter of reprimand. In addition, the Indiana Office of the Attorney General has jurisdiction to bring civil actions against any person who commits deception or misrepresentation in the home buying process, any person committing unlicensed practice, and any person acting as a credit services organization or foreclosure consultant who is not in compliance with Indiana law. The Indiana Office of the Attorney General also has authority to bring civil and/or administrative actions concerning individuals and entities committing the unlicensed practice of a regulated profession.

Civil Complaints and Assurances of Voluntary Compliance Filed January 1, 2011 – October 21, 2011

Case Name	Filing Date	County of Filing	Brief Case Summary
State of Indiana v. Van Camp, Elizabeth A.	1/18/2011	St. Joseph	Defendant allegedly violated the Home Loan Practices Act by engaging in deceptive practices during the loan origination process.
State of Indiana v. OnPoint Consumer Law Center	2/22/2011	Madison	Defendant is allegedly operating a foreclosure consultant business without complying with Indiana law. The State alleged that Defendant does not possess a surety bond and did not file the surety bond with the IN OAG but collected money prior to the completion of the contract, failed to fulfill contract terms, and failed to include legally required provisions in its contracts for foreclosure consulting services.

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State of Indiana v. The Loan Modification Group	2/25/2011	Marion	Defendant is allegedly operating a foreclosure consultant business without complying with Indiana law. The State alleged that Defendant does not possess a surety bond and did not file the surety bond with the IN OAG but collected money prior to the completion of the contract, failed to fulfill contract terms, and failed to include legally required provisions in its contracts for foreclosure consulting services.
State of Indiana v. The Loan Modification Team	3/03/2011	Vanderburgh	Defendant is allegedly operating a foreclosure consultant business without complying with Indiana law. The State alleged that Defendant does not possess a surety bond and did not file the surety bond with the IN OAG but collected money prior to the completion of the contract, failed to fulfill contract terms, and failed to include legally required provisions in its contracts for foreclosure consulting services.
State of Indiana v. Nationwide Home Relief	3/21/2011	Marion	Defendant is allegedly operating a foreclosure consultant business without complying with Indiana law. The State alleged that Defendant does not possess a surety bond and did not file the surety bond with the IN OAG but collected money prior to the completion of the contract, failed to fulfill contract terms, and failed to include legally required provisions in its contracts for foreclosure consulting services.
State of Indiana v. Nationwide Home Consultants, LLC	3/21/2011	Marion	Defendant is allegedly operating a foreclosure consultant business without complying with Indiana law. The State alleged that Defendant does not possess a

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			surety bond and did not file the surety bond with the IN OAG but collected money prior to the completion of the contract, failed to fulfill contract terms, and failed to include legally required provisions in its contracts for foreclosure consulting services.
State of Indiana v. The Velahos Law Firm d/b/a The National Foreclosure Consultants Group d/b/a Hope	4/07/2011	Johnson	Defendant is allegedly operating a foreclosure consultant business without complying with Indiana law. The State alleged that Defendant does not possess a surety bond and did not file the surety bond with the IN OAG but collected money prior to the completion of the contract, failed to fulfill contract terms, and failed to include legally required provisions in its contracts for foreclosure consulting services.
State of Indiana v. Save My Home USA	6/01/2011	Marion	Defendant is allegedly operating a foreclosure consultant business without complying with Indiana law. The State alleged that Defendant does not possess a surety bond and did not file the surety bond with the IN OAG but collected money prior to the completion of the contract, failed to fulfill contract terms, and failed to include legally required provisions in its contracts for foreclosure consulting services.
State of Indiana v. Help Modify Now	6/16/2011	Marion	Defendant is allegedly operating a foreclosure consultant business without complying with Indiana law. The State alleged that Defendant does not possess a surety bond and did not file the surety bond with the IN OAG but collected money prior to the completion of the contract, failed to fulfill contract terms, and failed to

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			include legally required provisions in its contracts for foreclosure consulting services.
State of Indiana v. AmeriStar Foreclosure Solutions	7/21/2011	Lawrence	Defendant is allegedly operating a foreclosure consultant business without complying with Indiana law. The State alleged that Defendant does not possess a surety bond and did not file the surety bond with the IN OAG but collected money prior to the completion of the contract, failed to fulfill contract terms, and failed to include legally required provisions in its contracts for foreclosure consulting services.
State of Indiana v. Premier Legal Advocates	7/27/2011	Shelby	Defendant is allegedly operating a foreclosure consultant business without complying with Indiana law. The State alleged that Defendant does not possess a surety bond and did not file the surety bond with the IN OAG but collected money prior to the completion of the contract, failed to fulfill contract terms, and failed to include legally required provisions in its contracts for foreclosure consulting services.
State of Indiana v. Legal Home Loan Solutions	8/10/2011	Hendricks	Defendant is allegedly operating a foreclosure consultant business without complying with Indiana law. The State alleged that Defendant does not possess a surety bond and did not file the surety bond with the IN OAG but collected money prior to the completion of the contract, failed to fulfill contract terms, and failed to include legally required provisions in its contracts for foreclosure consulting services.

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State of Indiana v. INQB8, LLC	8/11/2011	Marion	Defendant is allegedly operating a foreclosure consultant business without complying with Indiana law. The State alleged that Defendant does not possess a surety bond and did not file the surety bond with the IN OAG but collected money prior to the completion of the contract, failed to fulfill contract terms, and failed to include legally required provisions in its contracts for foreclosure consulting services.
State of Indiana v. Loan Correction Services, Inc. a/k/a Community One Law Center	8/24/2011	Porter	Defendant is allegedly operating a foreclosure consultant business without complying with Indiana law. The State alleged that Defendant does not possess a surety bond and did not file the surety bond with the IN OAG but collected money prior to the completion of the contract, failed to fulfill contract terms, and failed to include legally required provisions in its contracts for foreclosure consulting services.
State of Indiana v. Joseph Gembala III & Associates	8/25/2011	Madison	Defendant is allegedly operating a foreclosure consultant business without complying with Indiana law. The State alleged that Defendant does not possess a surety bond and did not file the surety bond with the IN OAG but collected money prior to the completion of the contract, failed to fulfill contract terms, and failed to include legally required provisions in its contracts for foreclosure consulting services.
State of Indiana v. Aria and Associates, Inc.	9/07/2011	Vanderburgh	Defendant is allegedly operating a foreclosure consultant business without complying with Indiana law. The State alleged that Defendant does not possess a

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			surety bond and did not file the surety bond with the IN OAG but collected money prior to the completion of the contract, failed to fulfill contract terms, and failed to include legally required provisions in its contracts for foreclosure consulting services.
State of India v. Reush, Marcia	9/07/2011	Dearborn	Defendant allegedly violated the Home Loan Practices Act by entering into lease agreements while simultaneously attempting to negotiate deeds in lieu of foreclosure. Due to the delinquent status of the mortgages on the properties, the State alleges that they lack the uses, characteristics, or benefits the lease agreement purport that they hold.
State of Indiana v. Marucci Law Firm	10/4/2011	Lake	Defendant is allegedly operating a foreclosure consultant business without complying with Indiana law. The State alleged that Defendant does not possess a surety bond and did not file the surety bond with the IN OAG but collected money prior to the completion of the contract, failed to fulfill contract terms, and failed to include legally required provisions in its contracts for foreclosure consulting services.
State of Indiana v. E.A.C. Financial, LLC	10/4/2011	Lake	Defendant is allegedly operating a foreclosure consultant business without complying with Indiana law. The State alleged that Defendant does not possess a surety bond and did not file the surety bond with the IN OAG but collected money prior to the completion of the contract, failed to fulfill contract terms, and failed to include legally required provisions in its contracts for foreclosure consulting

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			services.
State of Indiana v. Law Office of Andrea Loveless	10/6/2011	Hamilton	Defendant is allegedly operating a foreclosure consultant business without complying with Indiana law. The State alleged that Defendant does not possess a surety bond and did not file the surety bond with the IN OAG but collected money prior to the completion of the contract, failed to fulfill contract terms, and failed to include legally required provisions in its contracts for foreclosure consulting services.
State of Indiana v. Finley & Bologna International, P.A.	10/6/2011	Carroll	Defendant is allegedly operating a foreclosure consultant business without complying with Indiana law. The State alleged that Defendant does not possess a surety bond and did not file the surety bond with the IN OAG but collected money prior to the completion of the contract, failed to fulfill contract terms, and failed to include legally required provisions in its contracts for foreclosure consulting services.
State of Indiana v. Attorney Modification Network	10/19/2011	Marion	Defendant is allegedly operating a foreclosure consultant business without complying with Indiana law. The State alleged that Defendant does not possess a surety bond and did not file the surety bond with the IN OAG but collected money prior to the completion of the contract, failed to fulfill contract terms, and failed to include legally required provisions in its contracts for foreclosure consulting services.
State of Indiana v. 1st American Law Center	10/19/2011	Knox	Defendant is allegedly operating a foreclosure consultant business without

			complying with Indiana law. The State alleged that Defendant does not possess a surety bond and did not file the surety bond with the IN OAG but collected money prior to the completion of the contract, failed to fulfill contract terms, and failed to include legally required provisions in its contracts for foreclosure consulting services.
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Real Estate Appraiser Administrative Cases Filed January 1, 2011 – October 21, 2011

Total Number of Cases Filed	Revocation	Suspension	Probation	Letter of Reprimand	Pending
9	1	4	5	20	5

Real Estate Administrative Activities Cases Filed January 1, 2011 – October 21, 2011

Total Number of Cases Filed	Revocation	Suspension	Consumer Restitution	Probation	Civil Penalty	Letter of Reprimand	Pending
33	0	2	\$43,386.90	8	\$6,512.50	10	13

In the period January 1 – October 21, 2011, the Indiana Office of the Attorney General has received zero (0) consumer complaint concerning the improper influence of an appraiser.

The Indiana Office of the Attorney General actively uses the RREAL IN database administered by the Indiana Department of Insurance. The data is used to assist in on-going investigations and utilized to identify proactive cases. In 2010, the Indiana Office of the Attorney General proactively opened eight (8) investigations based upon data inputted into the RREAL IN database.

In 2011, one (1) case is still under investigation, four (4) were closed without litigation, and three (3) were made into litigation files against real estate licensees. Administrative complaints were filed with the Real Estate Commission and all three (3) had their real estate licensees disciplined as follows:

Name of Respondent	Discipline
Kirk Jerome Kusmiz	Letter of Reprimand and \$4,212.50 payment to the Consumer Protection Assistance Fund.
Alvan Vance McQueen, III	Letter of Reprimand
Kimberly A. Armantrout	Letter of Reprimand and \$300 civil penalty.

Disciplinary or Enforcement Actions Taken from October 1, 2010 through September 30, 2011

Indiana Secretary of State-Securities Division

The Indiana Secretary of State, Securities Division has jurisdiction concerning administrative enforcement of the Indiana Loan Broker Act (IC 23-2-5) (“Act”). The Act gives the Securities Commissioner the authority to deny, suspend, or revoke the license of any licensee and issue orders such as cease and desist orders, orders requiring loan brokers to appear for a hearing, and other notices. After the opportunity for a hearing, the Commissioner may order other remedies including a civil penalty up to ten thousand dollars (\$10,000), restitution for victims, and other remedies to recoup financial losses for victims if the Commissioner determines that a person has violated the Act

Loan Broker and Loan Originator Cases Filed October 1, 2010 – September 30, 2011

Total Number of Cases Filed	Revocation of Licenses	Denials of Licenses	Cease & Desist Orders ¹	Orders to Show Cause ²	Consent Agreements ³	Civil Penalties Ordered
54	1	0	4	3	31	\$118,100

Through its compliance audit program, the Division has completed 144 audits of Indiana licensed loan broker from October 1, 2010, to September 30, 2011.

Indiana Department of Insurance

The Title Insurance Division also addresses consumer complaints against title agencies and companies. During the course of investigating these complaints, a resolution is sometimes reached wherein consumer monies are recovered without Departmental administrative action. The total amount of monies the Title Division had a role in recovering on the part of consumers is also outlined below.

Due to the current economic situation and resulting housing market, a number of resident and non-resident title agencies have closed their businesses or chosen to no longer sell title insurance in Indiana. This resulted in the appearance of a higher number of examinations being completed as compared to the previous year because in cases where the agency has closed no actual examination may have been performed.

¹ Cease and Desist Orders are orders issued by the Securities Commissioner for the Respondent to immediately cease and desist from violating the Indiana Loan Broker Act.

² Order to Show Cause is an order issued by the Securities Commissioner for the Respondent to appear at a hearing and show cause why a loan broker or originator license should not be revoked or why civil penalties should not be levied against the Respondent.

³ Consent Agreement is an order signed by the Securities Commissioner outlining an agreement between the Securities Division and a Respondent in response to potential violations; frequently includes civil penalties from the Respondent.

Title Insurance Administrative Actions and Monies Recovered October 17, 2010 – September 30, 2011

Final Orders Issued ⁴	Revocation	Suspension	Fines collected	Consumer Monies Recovered
11	6	6	\$6,000	\$2,486,673.46

Title Insurance Agency Examinations Initiated October 17, 2010 – September 30, 2011

Title Insurance Agency Examinations Initiated	Title Insurance Agency Examinations Completed
149	107

(B) Criminal Prosecutions Pursued

Indiana Office of the Attorney General

In addition to its administrative and civil jurisdiction, the Indiana Office of the Attorney General partners with law enforcement in the investigation and criminal prosecution of mortgage fraud.

Defendant Name	Prosecuting Agency	Charge Information	Case Status	Sentence
Donella Locke	United States Attorney's Office - Southern District of Indiana	Indictment filed on 1/30/08. Charged with 31 Counts of Wire Fraud and One (1) Count of Conspiracy to Commit Wire Fraud.	Locke appealed her sentence and a re-sentencing hearing is scheduled for 11/18/2011.	Jury trial – guilty on five counts of wire fraud on 9/18/2009. Sentenced on 1/27/2010 to 71 months incarceration and

⁴ Since multiple Respondents may be contained in each Final Order, the collective sanctions are not intended to be tabulated to equal the number of Final Orders issued for the relevant time period.

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				ordered to pay \$2.3 million in restitution to 13 victim lenders.
Kelly Sherwood	Marion County Prosecutor's Office	Charges filed on 3/16/2010. Charged with four (4) counts of Theft.	Guilty Plea Hearing is continued until 11/14/2011.	
Jody Bence	Hamilton County Prosecutor's Office	Charges filed on 9/14/2010. Charged with one (1) count of Fraud on a Financial Institution.	Pretrial Conference scheduled for 11/15/2011 and Jury Trial scheduled for 12/12/2011.	
Richard S. Bloomer, III	Marion County Prosecutor's Office	Indictment filed on October 20, 2011. Charged with Four (4) Counts of Forgery, a Class C Felony.	Trial Date is set for 11/21/2011.	

Indiana Secretary of State-Securities Division

The Indiana Secretary of State, Securities Division created the Prosecution Assistance Unit ("PAU") in 2004, as a unit of investigators and attorneys with law enforcement experience. These investigators and attorneys investigate violations of the Indiana Uniform Securities Act and Loan Broker Act with a goal of presenting those cases for criminal prosecution to county prosecutors or United States Department of Justice. Most violations of the Loan Broker Act are a Class C felony, but it is a Class B felony if the violation occurs against an individual over the age of sixty (60).

Defendant Name	Prosecuting Agency	Indictment Date	Case Status	Sentence
Jason Keigley	Marion County	February 2009	Conviction	14 years, 6

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	Prosecutor			executed
Christopher Meeks	Henry County Prosecutor	July 2009	Pending	
Christopher Meeks	Rush County Prosecutor	August 2009	Conviction	1 year probation and restitution of \$1,000
James Hudson	Clinton County Prosecutor	March 2010	Pending	
Majik Moore	Marion County Prosecutor	April 2010	Conviction	Two 4 year sentences running concurrently, 2 years probation plus fines and costs
Robin Hunt	Allen County Prosecutor	July 2010	Conviction	1 year probation, \$25,000 restitution
Lane Miller	Allen County Prosecutor	July 2010	Conviction	1 year probation, agreed to testify against co-defendants
William Huston	Madison County Prosecutor	November 2010	Conviction	10 years, restitution of \$202,000

Jason Keigly- In February 2009, the Marion County Prosecutor's Office charged Jason Keigley with fourteen (14) felony counts, including six (6) counts of acting as an unlicensed loan broker and six (6) counts of loan broker fraud. The Case went to jury trial in Marion County in November of 2010. The Jury found the Defendant guilty of four (4) counts with the remaining counts being merged with the four (4) counts. The Defendant received a total of fourteen (14) years and was sentenced to the Department of Corrections.

Christopher Meeks- Christopher Meeks had two criminal cases involving loan broker fraud, including Henry County (pending) and Rush County, which is closed. In Rush County, Meeks was charged with one (1) felony count of acting as an unlicensed loan broker and one (1) felony count of loan broker fraud; Meeks pleaded guilty and was sentenced on March 29, 2011 to Theft, as a lesser included offense, and received one (1) year on formal Probation. Meeks paid \$1,000 (full) restitution to the victims in the case as well as fines, costs, and a public defender contribution. The Henry County case is still pending and set for trial in December, 2011.

James Hudson- James Hudson has a criminal case pending in Clinton County. Mr. Hudson is charged with one count of loan broker fraud and will plead guilty on October 31, 2011.

Majik Moore- The Securities Division filed an administrative case against Majik Moore in August 2009 for violations of the Indiana Loan Broker Act and Indiana Uniform Securities Act. In April, 2010, the Marion County Prosecutor's Office filed charges against Mr. Moore, which included six (6) counts of theft and four (4) charges related to securities crimes. These charges arose from the case that the Securities division filed in August of 2009. On May 4, 2011, the Defendant pleaded guilty to two (2) counts involving violations of Securities Laws. On June 16, 2011, Moore was sentenced to four (4) years on each count, to run concurrent, a term of 730 days probation, fines and costs.

Robin Hunt- Robin Hunt was charged on July 7, 2010, in Allen County with six counts of loan broker fraud. On January 27, 2011, Hunt pleaded guilty to two (2) counts of loan broker fraud (Class D felonies) On February 24, 2011, Hunt was sentenced to one (1) year of adult active probation on each count to run concurrent, fines and costs, and was required to pay \$25,000 in restitution to Flagstar Bank before the plea date. Hunt was associated with Co-Defendants Lane Miller, Joseph Garretson and Todd Leary.

Lane Miller- Lane Miller was charged on July 7, 2010, in Allen County with three counts of conspiracy to commit loan broker fraud (Class D felonies). On January 11, 2011, Miller pleaded guilty to conspiracy to commit loan broker fraud and was sentenced to one (1) year of active adult probation, 40 hours of community service work, fines and costs, in exchange for an agreement to testify against co-defendants at trial. Miller is associated with Defendants Robin Hunt and Todd Leary.

William Huston, Jr.- William Huston Jr., a former loan broker, had three counts (3) filed against him in Madison County that relate to his fraudulent actions when obtaining mortgages. The case was filed in November of 2010 and on September 12, 2011, Huston pleaded guilty to two (2) felonies: Fraud on a Financial Institution (Class C Felony) and Conversion or Misappropriation of Title Insurance Escrow Funds (Class B Felony). Huston, Jr. received a concurrent sentence of ten (10) years and will serve two (2) of those years on home Detention and the remaining eight (8) on active adult probation.

A judgment was entered in the amount of \$202,000 of restitution to be paid to First American Title Insurance Company. Count I, Theft, property value of over \$100,000, (Class C), was dismissed pursuant to plea negotiations.

(C) Policies Issued (Rules, Bulletins, Consumer Advisories)

Indiana Secretary of State

The Division has not issued any formal policies related to loan broker regulation in 2011. However, the Division has been in constant contact with its licensees related to federal requirements that have come into effect through the course of 2011. All loan brokers and mortgage loan originators are licensed through the Nationwide Mortgage Licensing System. During the renewal period at the end of 2010, all mortgage loan originators and principal managers were required to submit a credit report and undergo a criminal background check. To prepare licensees for this deadline, the Division initiated a number of communications by mail, email, and telephone to its licensees. The Division has prepared periodic updates to all licensed individuals describing recent changes in state law, federal law, and the industry as a whole.

The Division hosted mortgage loan broker compliance meetings in 2008, 2009, and 2010, which have been attended by over five hundred (500) mortgage loan brokers and mortgage loan originators. Through these meetings, the Division was able to communicate with its licensees about issues discovered in compliance audits, recent statutory changes that affected the licensees, and procedures for applying for a license through the NMLS. The compliance meetings have been a great

Indiana Department of Insurance

The Indiana Department of Insurance has communicated with law enforcement regarding some possible criminal behaviors exhibited by title agents and/or title agencies. Additionally, the Title Insurance Division sees, from time to time, the activities of licensees of other state agencies which appear to be mortgage fraud. For the time period of October 16, 2010, to September 30, 2011, four such instances have been reported to the Office of the Attorney General.

These cases all involved a scheme called “flopping.” Flopping occurs when individuals who purport to be “investors” purchase a property where they have convinced a seller and a bank to accept a price lower than the principal balance due on the note (“short sale”) and market value for the property. The buyer or investor then quickly, often on the same day, sells the property to another buyer for a far greater amount and realizes the profit himself.

Indiana Office of the Attorney General

The IN OAG dedicates a considerable amount of resources to educate and alert consumers, including those practicing within the real estate industry, of emerging trends of fraud. In addition to Consumer Alerts on the IN OAG website and a monthly article in the Indiana Association of Realtor's on-line magazine, employees of the IN OAG including Attorney General Greg Zoeller spend time speaking to members of the public, Realtor associations, and continuing education courses for real estate licensees. Two of the emerging fraud trends highlighted in these forums in real estate flopping and Broker Price Opinion (BPO) fraud.

Flopping is abuse of the short sale process to allow the mastermind of the scheme to make a substantial profit. The mastermind locates a property in imminent or threatened foreclosure and then approaches the homeowner with the scheme. The homeowner and mastermind enter into an Option to Purchase which the mastermind immediately records. The mastermind then attempts to negotiate a short sale with the lender or servicer and simultaneously lists the property for sale at market value with a real estate brokerage. While the mastermind is attempting to negotiate the short sale a legitimate end buyer is procured. When an end buyer is located one of two things will happen. If the mastermind has been successful in negotiating a short sale at a price favorable to him, he will buy the property and flop it to the end buyer usually in back to back closings. If the mastermind has been unsuccessful in the short sale negotiation attempt he will allow the transaction to close directly from the homeowner to the end buyer. Since this cannot happen without the release of the recorded Option to Purchase, the mastermind charges \$5,000 to have the Option to Purchase released.

Coupled with the real estate flopping, the IN OAG is finding cases of BPO fraud. The BPO is the preferred method of valuing property for a short sale, due to the relatively high expense of obtaining real estate appraisals. The IN OAG is seeing cases where the BPO is fraudulently kept low to deceive the lender concerning the property's true market value. BPO Fraud allows the mastermind to negotiate a low short sale price, thereby creating a larger profit between the short sale price and the price paid by the end buyer.

Indiana Professional Licensing Agency

The Indiana Real Estate Commission revised existing administrative rules and adopted several new rules from November 1, 2010 to November 1, 2011. The majority of these changes involved clerical corrections, reorganization of existing rules, and updating rules that contained outdated terminology.

- LSA Document #11-325 (Real Estate Commission fee schedule)

This rule amended 876 IAC 1-1-19, 876 IAC 4-1-2, 876 IAC 4-1-5, and 876 IAC 4-2-9 by relocating fee amounts listed under these sections to one section under 876 IAC 2-18-1. It also amended 876 IAC 2-18-1 to establish all Indiana Real Estate Commission fees under this section.

- LSA Document #11-176 (ASC fee increase)

This rule amended 876 IAC 3-2-7 Fee schedule to reflect an increase in the fee collected for and transmitted to the Appraisal Subcommittee of the Federal Financial Institutions Examination Council as required by federal law, updated the process of collection of fees at issuance to coincide with the current renewal cycle, and eliminated outdated fees concerning approval of pre-licensing education and continuing education providers.

Several rules are currently being drafted and reviewed by staff, and will be presented to the Commission for consideration in the near future.

- LSA Document #11-428 (Appraiser Mandatory Supervisor Course)

The Real Estate Appraiser Licensure and Certification Board has found that a growing number of consumer complaints filed in recent years have resulted from errors and omissions in appraisals directly attributable to a lack of appropriate supervision by trainee appraisers' supervisors. In several instances, trainees indicated they were unaware of the proper methodology or principles in use at least partly due to the approach their supervising appraiser had taken to supervising their work. Increasingly, disciplinary sanctions have involved sanctions against both a trainee appraiser and his supervisor, to account for the role the supervising appraiser played in certain matters.

The Board seeks to improve consumer protection through increased supervising appraiser education and to provide trainee appraisers with clear minimum qualifications of supervisors. Supervising appraisers will be required to complete a mandatory course that addresses appraisal history, agencies that govern the appraisal industry, professional standards in appraising, Indiana real estate appraisal law, federal law, and disciplinary case studies. This rule change will make the course mandatory for any licensed or certified appraiser in Indiana who wishes to act as a supervising appraiser for a trainee appraiser.

- Commission and Board overhaul of existing administrative rules

The Commission and Board are each currently reviewing all administrative rules adopted by them, and will consider adopting changes to update language and revise existing rules to improve compliance and enforcement.

The Commission also initiated a quarterly newsletter, distributed to all licensed real estate professionals. Included was information on licensing laws and rules, proposed changes to these laws and rules, as well as other various matters regarding real estate licensing. The recently adopted statutory requirements of disclosure of license number and name at closing- for RREAL IN reporting- were discussed in the first issue, as well. The Commission will include discipline imposed on licensees in future issues, to increase awareness in the real estate industry of the work of the Commission to improve consumer protection in Indiana through regulation of licensee practice.

(D) Legislative Recommendations Made

Indiana Secretary of State – Securities Division

During the 2011 General Session, the Indiana Loan Broker Act was not amended by the General Assembly. Due to the ongoing changes and adoptions in federal regulation of the mortgage industry, the Securities Division sent multiple communications to its licensees concerning those changes.

In the 2012 General Session, the Securities Division intends to examine the use of the bonds required for licensed loan brokers with the intention of making them available for the collection of civil penalties for the state. The Securities Division will also look into the requirements of the Secure and Fair Enforcement for Mortgage Licensing Act as it pertains to loan broker licensing for companies involved in the manufactured housing industry.

The Indiana Secretary of State – Securities Division also will continue to work with the Indiana Department of Financial Institutions on issues that affect the licensees of both agencies.

Indiana Office of the Attorney General

During the 2011 legislative session, numerous laws were enacted that would have a positive effect on the Licensing Enforcement & Homeowner Protection Unit's and the Task Force's mission.

- Homeowners Associations - Ind. Code § 32-25.5-3-8 which was added to the article on Homeowners Association. It confers authority on the attorney general to bring actions against a board or an individual member of a board of a homeowners association if the attorney general finds that the association's funds have been knowingly or intentionally misappropriated or diverted by a board member; or, a board member has knowingly or intentionally used the board member's position on the board to commit fraud or a criminal act against the association or the association's members.
- RREAL IN Database – Amendments were made to the mandatory items that had to be reported in the RREAL IN database.
- Cease and Desist – The law governing cease and desist actions was amended to clarify the administrative process governing these actions. Starting July 1, 2010 will be how the OAG handles unlicensed practice cases.

Indiana Department of Financial Institutions

LICENSING and EXAMINATION SUMMARY:

First Lien Mortgage Lending:

Approved Licenses – 55 - from October 1, 2010 to September 30, 2011
Total approved Licenses - 327
Currently Active Licenses - 257
Examinations completed in the reporting period – 84

Subordinate Lien Mortgage Lending:

Approved licenses – 14 - from October 1, 2010 to September 30, 2011
Total approved Licenses – 125
Currently Active Licenses - 86
Examinations completed in the reporting period - 18

Mortgage Loan Originator:

Approved licenses – 1,491 – from October 1, 2010 to September 30, 2011
Total approved Licenses – 3,451
Currently Active Licenses – 3,386

SAFE RULE:

The Department of Financial Institutions SAFE Rule, 750 IAC 9, is amended from time to time to maintain compliance with the provisions of the federal S.A.F.E Act. The rule is posted at:

<http://www.in.gov/legislative/iac/T07500/A00090.PDF>

STATUTORY CHANGES:

SECTION 2. IC 24-4.4-1-201, AS AMENDED BY P.L.1-2009, SECTION 134, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 201. (1) Except as provided in subsection (2), this article applies to a first lien mortgage transaction:

(a) that is secured by an interest in: land

(i) a dwelling; or

(ii) residential real estate upon which a dwelling is constructed or intended to be constructed;

in Indiana; and

(b) the closing for which takes place after December 31, 2008.

SECTION 3. IC 24-4.4-1-202, AS AMENDED BY P.L.35-2010, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 202. This article does not apply to the following:

(1) Extensions of credit to government or governmental agencies or instrumentalities.

(2) A first lien mortgage transaction in which the debt is incurred primarily for a

purpose other than a personal, family or household purpose.

(3) An extension of credit primarily for a business, a commercial, or an agricultural purpose.

(4) Except for IC 24-4.4-2-401(2), IC 24-4.4-2-402.3, IC 24-4.4-2-405(4), and IC 24-4.4-2-405(5), a first lien mortgage transaction made:

(a) in compliance with the requirements of; and

(b) by a community development corporation (as defined in IC 4-4-28-2) acting as a subrecipient of funds from;

the Indiana housing and community development authority established by IC 5-20-1-3.

(5) Except for IC 24-4.4-2-401(2), IC 24-4.4-2-402.3, IC 24-4.4-2-405(4), and IC 24-4.4-2-405(5), a first lien mortgage transaction made by an entity that exclusively uses funds provided by the United States Department of Housing and Urban Development under Title 1 of the federal Housing and Community Development Act of 1974, Public Law 93-383, as amended (42 U.S.C. 5301 et seq.).

(6) An extension of credit originated by:

(a) a depository institution; **or**

(b) subsidiaries that are:

(i) owned and controlled by a depository institution; and

(ii) regulated by a federal banking agency; or

(c) **(b)** an institution regulated by the Farm Credit Administration.

(7) Except for IC 24-4.4-2-401(2), IC 24-4.4-2-402.3, IC 24-4.4-2-405(4), and IC 24-4.4-2-405(5), a credit union service organization that is majority owned, directly or indirectly, by one (1) or more credit unions.

(8) **(7)** A first lien mortgage transaction originated by a registered mortgage loan originator, when **an individual** acting for an entity described in subsection (6) **if the individual:**

(a) is a registered mortgage loan originator, in the case of a first lien mortgage transaction that is originated at least one hundred eighty (180) days after the date that the NMLSR begins accepting registrations from mortgage loan originators employed by institutions regulated by the federal banking agencies or the Farm Credit Administration; or

(b) will be eligible for registration with the NMLSR after the NMLSR begins accepting registrations from mortgage loan originators employed by institutions regulated by the federal banking agencies or the Farm Credit Administration, in the case of a first lien mortgage transaction that is originated not later than one hundred eighty (180) days after the date that the NMLSR begins accepting registrations from mortgage loan originators described in clause (a).

However, A privately insured state chartered credit union shall **also** comply with the system of mortgage loan originator registration developed by the Federal Financial Institutions Examinations Council under Section 1507 of the federal

Safe **Secure** and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE).

(9) **(8)** An individual who offers or negotiates terms of a mortgage transaction with or on behalf of an immediate family member of the individual.

(10) **(9)** An individual who offers or negotiates terms of a mortgage transaction secured by a dwelling that served as the individual's residence.

(11) **(10)** Unless the attorney is compensated by:

(a) a lender;

(b) a mortgage broker;

(c) another mortgage loan originator; or

(d) any agent of the lender, mortgage broker, or other mortgage loan originator described in clauses (a) through (c);

a licensed attorney who negotiates the terms of a mortgage transaction on behalf of a client as an ancillary matter to the attorney's representation of the client.

(12) Agencies, instrumentalities, and government owned corporations of **(11)** The United States, **any state or local government, or any agency or instrumentality of any governmental entity**, including United States government sponsored enterprises.

(12) A person in whose name a tablefunded transaction is closed, as described in section 301(34)(a) of this chapter. However, the exemption provided by this subdivision does not apply if:

(a) the transaction:

(i) is secured by a dwelling that is a mobile home, a manufactured home, or a trailer; and

(ii) is not also secured by an interest in land; and

(b) the person in whose name the transaction is closed, as described in section 301(34)(a) of this chapter, sells the dwelling to the debtor through a retail installment contract or other similar transaction.

(14) "First lien mortgage transaction" means:

(a) a loan; or

(b) a consumer credit sale;

that is or will be used by the debtor primarily for personal, family, or household purposes and that is secured by a mortgage a land contract, (or another equivalent consensual security interest) which **that** constitutes a first lien on a dwelling or **on** residential real estate **upon which a dwelling is constructed or intended to be constructed.**

(23) "Mortgage transaction" means:

(a) a loan; or

(b) a consumer credit sale;

that is or will be used by the debtor primarily for personal, family, or household purposes and that is secured by a mortgage a land contract, (or another equivalent consensual security interest) on a dwelling or **on** residential real estate **upon which a dwelling is constructed or intended to be constructed.**

(24) "Nationwide Mortgage Licensing System and Registry" or "NMLSR" means

a mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of creditors and mortgage loan originators.

SECTION 9. IC 24-4.4-2-406 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]:

Sec. 406. (1) As used in this section, "control" means possession of the power directly or indirectly to:

- (a) direct or cause the direction of the management or policies of a creditor, whether through the beneficial ownership of voting securities, by contract, or otherwise; or**
- (b) vote at least twenty-five percent (25%) of the voting securities of a creditor, whether the voting rights are derived through the beneficial ownership of voting securities, by contract, or otherwise.**

(2) An organization or an individual acting directly, indirectly, or through or in concert with one (1) or more other organizations or individuals may not acquire control of any creditor unless the department has received and approved an application for change in control. The department has not more than one hundred twenty (120) days after receipt of an application to issue a notice approving the proposed change in control. The application must contain the name and address of the organization, individual, or individuals who propose to acquire control and any other information required by the director.

(3) The period for approval under subsection (2) may be extended:

- (a) in the discretion of the director for an additional thirty (30) days; and**
- (b) not more than two (2) additional times for not more than forty-five (45) days each time if:**
 - (i) the director determines that the organization, individual, or individuals who propose to acquire control have not submitted substantial evidence of the qualifications described in subsection (4);**
 - (ii) the director determines that any material information submitted is substantially inaccurate; or**
 - (iii) the director has been unable to complete the investigation of the organization, individual, or individuals who propose to acquire control because of any delay caused by or the inadequate cooperation of the organization, individual, or individuals.**

(4) The department shall issue a notice approving the application only after it is satisfied that both of the following apply:

- (a) The organization, individual, or individuals who propose to acquire control is qualified by competence, experience, character, and financial responsibility to control and operate the creditor in a legal and proper manner.**
- (b) The interests of the owners and creditors of the creditor and the interests of the public generally will not be jeopardized by the proposed change in control.**

(5) The director may determine, in the director's discretion that subsection (2) does not apply to a transaction if the director determines that the direct or beneficial ownership

of the creditor will not change as a result of the transaction.

(6) The president or other chief executive officer of a creditor shall report to the director any transfer or sale of securities of the creditor that results in direct or indirect ownership by a holder or an affiliated group of holders of at least ten percent (10%) of the outstanding securities of the creditor. The report required by this section must be made not later than ten (10) days after the transfer of the securities on the books of the creditor.

(7) Depending on the circumstances of the transaction, the director may reserve the right to require the organization, individual, or individuals who propose to acquire control of a creditor licensed under this article to apply for a new license under section 401 of this chapter, instead of acquiring control of the licensee under this section.

II. Description of Any Challenges Encountered by the Task Force This Year or That Are Anticipated by the Task Force in the Current Fiscal Year

1. Currently, there is opportunity for a penalty to be assessed for a failure of industry professionals to provide licensing information to those responsible for the loan closing and for a failure of those responsible for the loan closing to input that information into the database. Setting aside those penalties for improvements to the database would provide a mechanism for on-going funding of database improvements. See IC 27-7-3-15.5(e)(2)(h).
2. The task force recommends a further review of the statute and any possible rule making authority to ensure that the database can be maintained and self-funded.